



6351-01-P

## COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this Notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Management and Budget (“OMB”) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection described in this Notice, including suggestions for reducing the burden, to the addresses below. Please refer to OMB Control No. 3038-NEW, Form TO in any correspondence. Submit comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, by the following method:

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, NW, Washington, DC 20503.

And

Commodity Futures Trading Commission (“CFTC”), by any of the following methods:

- Agency Web Site: <http://comments.cftc.gov>. Follow the instructions for submitting comments through the web site.
- Mail: Melissa Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- Hand Delivery/Courier: Same address as for “Mail,” above.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* Please submit your comments to both OMB and CFTC (for CFTC, use only one of the methods listed above), and identify all comments as pertaining to OMB Control No. 3038-NEW, Form TO.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received, without change, to [www.cftc.gov](http://www.cftc.gov). You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.<sup>1</sup>

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Division of Market Oversight, [dheitman@cftc.gov](mailto:dheitman@cftc.gov), (202) 418-5041, FAX: (202) 418-5507; or David Aron, Office of the General Counsel, [daron@cftc.gov](mailto:daron@cftc.gov), (202) 418-6621, FAX: (202) 418-5702; Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC

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<sup>1</sup> See 17 CFR 145.9.

20581, and refer to OMB Control No. 3038-NEW, Form TO.

SUPPLEMENTARY INFORMATION:

Title:

Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options (OMB Control No. 3038-NEW, Form TO). This is a request for approval of a new collection of information.

Abstract:

In accordance with section 721 of the Dodd-Frank Act, on April 27, 2012, the Commission published a final and interim final rule governing commodity options (“Commodity Options Rules”).<sup>2</sup> The final rule portion of that rulemaking adopted the Commission’s proposal to generally permit market participants to trade commodity options, which are statutorily defined as swaps,<sup>3</sup> subject to the same rules applicable to every other swap. The interim final rule portion of the rulemaking includes a trade option

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<sup>2</sup> Commodity Options, 77 FR 25320, April 27, 2012.

<sup>3</sup> See 7 U.S.C. 1a(47)(A)(i). Note that the swap definition excludes options on futures (which must be traded on a designated contract market (“DCM”) pursuant to part 33 of the Commission’s regulations) (*see* Commodity Exchange Act (“CEA”) section 1a(47)(B)(i), 7 U.S.C. 1a(47)(B)(i)), but it includes options on physical commodities (whether or not traded on a DCM) (*see* CEA section 1a(47)(A)(i), 7 U.S.C. 1a(47)(A)(i)). Other options excluded from the statutory definition of swap are options on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that are subject to the Securities Act of 1933 and the Securities Exchange Act of 1934 (*see* CEA section 1a(47)(B)(iii), 7 U.S.C. 1a(47)(B)(iii)) and foreign currency options entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (*see* CEA section 1a(47)(B)(iv), 7 U.S.C. 1a(47)(B)(iv)).

Note also that the Commission’s regulations define a commodity option transaction or commodity option as “any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an ‘option,’ ‘privilege,’ ‘indemnity,’ ‘bid,’ ‘offer,’ ‘call,’ ‘put,’ ‘advance guaranty’ or ‘decline guaranty.’” 17 CFR 1.3(hh). For purposes of this release, the Commission uses the term “commodity options” to apply solely to commodity options not excluded from the swap definition set forth in CEA section 1a(47)(A), 7 U.S.C. 1a(47)(A). Last year, the Commission published, jointly with the Securities and Exchange Commission (“SEC”) final rules to further define, among other things, the term “swap.” *See* Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement; Final Rule, 77 FR 48207, August 13, 2012 (“Product Definitions Final Rules”). The Product Definitions Final Rules address the determination of whether a commodity option or a transaction with optionality is subject to the swap definition in the first instance. If a commodity option or a transaction with optionality is excluded from the scope of the swap definition (for example, if it is an excluded forward contract—*see id.* at 48227), the commodity options rules, including the Form TO reporting requirement, are not applicable.

exemption for physically delivered commodity options purchased by commercial users of the commodities underlying the options (“Trade Option Interim Final Rule” or “Trade Option IFR”), subject to certain conditions. Those conditions, which include both recordkeeping and reporting obligations, are primarily intended to preserve a level of market visibility for the Commission while reducing the regulatory compliance burden for market participants. The requirement to file Form TO constitutes the collection of information within the meaning of the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Form TO filing requirement was promulgated last year in the Commodity Options Rules, and the associated collection of information is now being submitted to OMB. The Federal Register notice for the 60-day comment period on this request for approval of a new collection of information was published on December 17, 2012.<sup>4</sup> That notice included a description of the content of Form TO and when a person would be required to file Form TO.

Burden statement: The Commission estimates the burden of this collection of information as follows:

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<sup>4</sup> See Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options, 77 FR 74647.

# ESTIMATED ANNUAL REPORTING BURDEN HOURS AND BURDEN HOUR COSTS

17 CFR	Annual number of respondents	Frequency of response per respondent	Hours per response and cost	Total annual responses	Total hours cost
Part 32, Appendix A, Form TO.	100	Annually	2 hours at \$200 per response. <sup>5</sup>	100 (one form per otherwise unreported trade option participant).	\$20,000 (100 responses times 2 hours per response, based on \$100/hour.)

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: February 13, 2013

Melissa D. Jurgens,

Secretary of the Commission.

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<sup>5</sup> The Commission estimates that entities will spend \$100 per hour. The \$100 per hour estimate was used as the average hourly wage rate in the PRA section of the Internal Business Conduct Standards for Swap Dealers and Major Swap Participants final rule (*see* Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, 20194 (Apr. 3, 2012)) and the wage rate for CCOs under the DCO final rules (*see* Proposed Collection, Comment Request: Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping: Book-out Agreement Confirmation, 76 FR 69344, 69428 (Aug. 16, 2012)). As the Commission explained in the Internal Business Conduct Standards final rule, the estimate of \$100 per hour was based on recent Bureau of Labor Statistics findings, including the mean hourly wage of an employee under occupation code 23–1011, “Lawyers,” that is employed by the “Securities and Commodity Contracts Intermediation and Brokerage Industry,” which is \$85.20. The mean hourly wage of an employee under occupation code 11–3031, “Financial Manager,” in the same industry is \$80.90. Additionally, SIFMA’s “Report on Management & Professional Earnings in the Securities Industry—2011” estimates the average wage of a compliance attorney at \$96.42 and a compliance specialist in the U.S. at \$74.85 per hour. As in those rules, the Commission is using a \$100 per hour wage rate in calculating the cost burdens imposed by this collection of information and requests comment on the accuracy of its estimate.

